

April 19, 2021

VIA ECF

Hon. Christian F. Hummel, U.S. Magistrate Judge
James T. Foley U.S. Courthouse
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Albany, New York 12207

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RE: *Eldridge v. Beech-Nut Nutrition Co.; Gerber Products Co.; and John Doe*
Manufacturers
No. 1:21-cv-00283-TJM-CFH

Dear Magistrate Judge Hummel:

I represent defendant Gerber Products Company (“Gerber”). Pursuant to Local Civil Rule 7.1(a), defendants respectfully request a telephonic conference regarding defendants’ proposed motion to sever Gerber from this action and transfer the claims against Gerber to the District of New Jersey.

This case is one of over 50 actions filed across the country pending against Gerber, defendant Beech-Nut Nutrition Co. (“Beech-Nut”), and/or several of their baby food manufacturer competitors concerning allegations of purportedly undisclosed levels of heavy metals in baby food products. Most of such actions asserting claims against Beech-Nut are pending in this District before Judge McAvoy. By contrast, other than this action, no other plaintiff has filed a complaint asserting claims against Gerber in this District. Instead, the greatest number of actions asserting claims against Gerber (seven) are pending in the District of New Jersey. Defendants’ proposed motion would assert that plaintiff has misjoined defendants in violation of Rule 20, and would ask to the Court to sever plaintiff’s claims against Gerber into a separate lawsuit pursuant to Rule 21 and transfer the case against Gerber to the District of New Jersey pursuant to this Circuit’s first-filed rule and/or 28 U.S.C. § 1404(a). Any claims against “John Doe Manufacturers” should also be severed.

In an attempt to preserve judicial economy, counsel for Gerber and Beech-Nut, Catherine Simonsen and Liv Kiser, respectively, met and conferred with counsel for plaintiff, Melissa Clark, on April 9, 2021, regarding defendants’ proposed motion. Counsel for plaintiff does not consent to the proposed severance and transfer.

We thank Your Honor for your consideration of this request.

Hon. Christian F. Hummel
April 19, 2021

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Bryan A. Merryman", with a stylized flourish at the end.

Bryan A. Merryman

cc: Counsel of Record (via ECF)